

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of

READING BROADCASTING, INC.

For Renewal of License of
Station WTVE(TV), Channel 51
Reading, Pennsylvania

and

ADAMS COMMUNICATIONS CORPOATION

For Construction Permit for a New
Television Station to Operate on
Channel 51, Reading, Pennsylvania

MM Docket No. 99-153

File No. BPCT-940407KF

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

File No. BPCT-940630KG

TO: Magalie Roman Salas, Secretary
for direction to
The Honorable Richard L. Sippel
Administrative Law Judge

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF ADAMS COMMUNICATIONS CORPORATION**

GENE A. BECHTEL
HARRY F. COLE

Bechtel & Cole, Chartered
1901 L Street, NW, Suite 250
Washington, DC 20036
(202) 833-4190

Counsel for Adams Communications Corporation

October 2, 2000

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BECHTEL & COLE
CHARTERED
ATTORNEYS AT LAW
SUITE 250
1901 L STREET, NW
WASHINGTON, DC 20036

TELEPHONE: (202) 833-4190
FACSIMILE: (202) 833-3084
EMAIL: saparrish@coleslaw.com

MEMORANDUM

To: Dave, Copy General
From: Simone Parrish, Legal Assistant
Date: September 29, 2000
Re: Details on upcoming job

As we discussed by telephone yesterday, we're going to have a big pleading ready to be copied on Monday as soon as you're open. We'd like GBC-bound books with tabs; 5th-cut tabs would be fine. We would like the tab dividers to read as follows:

Preliminary Statement
Standard Comparative Findings
Phase II Findings
Phase III Findings
Phase III Conclusions
Phase II Conclusions
Standard Comparative Conclusions
Ultimate Conclusions

I'll bring the other details over with the job bright & early Monday morning – we're looking to get them back around 2 p.m.

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SUMMARY

In this comparative renewal proceeding, Adams Communications Corporation ("Adams") is plainly the superior applicant. Indeed, it is the only qualified applicant.

Contrary to the allegations of Reading Broadcasting, Inc. ("RBI"), Adams filed its application with the goal of obtaining a construction permit and building and operating a television station providing local programming to Reading, Pennsylvania. The record clearly establishes this, and equally clearly reveals RBI's allegations to have been totally unfounded.

By contrast, RBI is not qualified to remain a licensee. The history of fraud, deception and misrepresentation of its dominant principal, Micheal Parker, disqualifies RBI from renewal. The record evidence conclusively establishes that Mr. Parker has repeatedly and consistently refused to comply with the requirements of honesty and candor imposed by the Commission on its regulatees. The record further establishes that Mr. Parker's refusal was not just a one-time-only occurrence far in the past. To the contrary, he has engaged in misrepresentation and lack of candor repeatedly for then years, most recently in this very proceeding.

And even if RBI were deemed to be qualified, it is comparatively inferior to Adams. Adams consists of civically active and successful business and professional people. RBI is led by Mr. Parker, who has been found guilty of fraud before the Commission.

And even if Mr. Parker's history of misconduct were ignored, the fact remains that

RBI's record of performance during the license term was dismal. It provided no locally-produced, locally-oriented programs addressed to community needs and interests. Instead, for the majority of the license term RBI consciously chose *not* to provide such programming, opting instead to present a mishmash of PSA's, some local, some not, broadcast on no apparent schedule.

While Mr. Parker attempted to defend this approach as a matter of finances, his defense was shattered by the fact that, at his own insistence, the station broadcast a religious program which required the preemption of revenue-producing programming but which did not result in any revenue to the station.

RBI's comparative showing further suffered from repeated failures by RBI -- many of them conceded by RBI -- to comply with the Commission's reporting rules. It further suffered from RBI's total lack of responsiveness to complaints from local residents, and its failure to make any discernible investment in improved public service.

Finally, Adams is entitled to a clear diversification preference over RBI.

The totality of the record compels a determination that RBI is not qualified, while Adams is. Accordingly, Adams's application should be granted. And even if RBI were deemed, *arguendo*, to be qualified, Adams must still prevail on comparative grounds.

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**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF ADAMS COMMUNICATIONS CORPORATION**

Appearances

Gene A. Bechtel and Harry F. Cole on behalf of Adams Communications Corporation; *Thomas J. Hutton, Randall W. Sifers and C. Dennis Southard* on behalf of Reading Broadcasting, Inc.; *James Shook* on behalf of Chiefs, Mass Media Bureau and Enforcement Bureau.

PRELIMINARY STATEMENT

1. This proceeding was commenced on May 6, 1999, by *Hearing Designation Order ("HDO")*, 14 FCC Rcd 7176 (Mass Media Bureau 1999), setting down for hearing the application of Reading Broadcasting, Inc. ("RBI"), for the renewal of the license of Station WTVE(TV), Reading, Pennsylvania, and the mutually exclusive application of

Adams Communications Corporation ("Adams") for a new television station to operate on the channel presently occupied by WTVE-TV. The Commission was represented in the proceeding initially by the Mass Media Bureau and later, due to a reorganization within the Commission, the Enforcement Bureau.^{1/}

2. In the HDO the Chief, Mass Media Bureau, designated the competing applications for hearing in a consolidated proceeding on the following issues:

To determine which of the proposals would, on a comparative basis, better serve the public interest; and

To determine, in light of the evidence adduced pursuant to the foregoing issue, which, if either, of the applications should be granted.

These are referred to collectively herein as the "Standard Comparative Renewal Issue".

3. Acting at the request of Adams with the support of the Bureau, by *Memorandum Opinion and Order*, FCC 99M-61, released October 15, 1999, the Presiding Judge added the following issue:

To determine whether Micheal L. Parker engaged in a pattern of misrepresentation and/or lack of candor in failing to advise the Commission of the actual nature and scope of his previously adjudicated misconduct and, if so, the effect of such misrepresentation and/or lack of candor on Reading's qualifications to remain a licensee.

This issue is referred to herein as "the Phase II Issue".

4. Acting at the request of RBI, and despite the Bureau's opposition, by *Memorandum Opinion and Order*, FCC 00M-19, released March 6, 2000, the Presiding Judge added the following issues:

^{1/} For purposes of these Proposed Findings and Conclusions, the Mass Media Bureau and Enforcement Bureau will be referred to simply as "the Bureau".

- A. To determine whether the principals of Adams Communications Corporation ("Adams") filed, or caused to be filed, an application for construction permit in the hope or expectation of achieving through litigation and settlement, a "precedent" or other recognition that the home shopping television broadcasting format does not serve the public interest.
- B. To determine in light of findings and conclusions as to issue A above, whether the principals of Adams Communications Corporation had, and continue to have, from June 30, 1994, to the present, a *bona fide* intention to construct and operate a television broadcasting station at Reading, Pennsylvania.
- C. To determine in light of findings and conclusions as to issues A and B above, whether Adams Communications Corporation has engaged and/or is engaging in an abuse of process, i.e., an abuse of the Commission's comparative renewal litigation and settlement process.
- D. If issues A and/or B and/or C are true, to determine whether Adams Communications Corporation is qualified to receive a Commission license, even if Adams would be willing to accept a settlement payment that is limited to legitimate and prudent expenses in return for dismissing its application.

These issues are referred to collectively herein as "the Phase III Issue". ^{2/}

5. An admissions session was held on January 4, 2000 with respect to documentary evidence to be introduced during trial of the Standard Comparative Renewal Issue. Testimonial hearings were held on January 6, 7, 10-13, 2000 with respect to the Comparative Issue. An admissions session was held on June 12, 2000 with respect to documentary evidence to be introduced during trial of the Phase II Issue and the Phase III Issue. Testimonial hearings were held on June 13-15, 19-21 and July 25, 2000 with respect the Phase II Issue and the Phase III Issue. The record was closed by *Order*,

^{2/} The Phase III Issue was originally added by *Memorandum Opinion and Order*, 00M-07, released January 20, 2000. The language of the issues was revised by *Memorandum Opinion and Order*, FCC 00M-19, released March 6, 2000, as set forth in the text above.

FCC 00M-52, released August 18, 2000. The parties were required to submit their proposed findings of fact and conclusions of law on October 2, 2000, and their reply findings and conclusions by October 23, 2000. *Order*, FCC 00M-55, released September 18, 2000.